

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

_____	:	
KAREEM BESS,	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	NO. 96-6315
	:	
CORRECTIONAL OFFICERS C/O	:	
SGT. BRENT POST, et al.,	:	
	:	
Defendants	:	
_____	:	

MEMORANDUM

R.F. KELLY, J.

AUGUST 14, 1997

Before the Court is Defendants' Motion for Summary Judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Plaintiff filed this action, pro se, seeking injunctive relief pursuant to 42 U.S.C. § 1983 ("Section 1983") and the Cruel and Unusual Punishment Clause of the Eighth Amendment against certain corrections officers at the State Correctional Institution at Mahanoy ("Mahanoy"). For the reasons that follow, Defendants' Motion will be granted.

I. Facts

Plaintiff, Kareem Bess, was an inmate incarcerated at Mahanoy. Plaintiff alleges that on June 21, 1996, he was assaulted by Defendants Thomas and Ireland and that Defendants Post and Friendly permitted the alleged assault to take place. This incident resulted in a cut or scrape on Plaintiff's hand. Plaintiff further alleges that he was assaulted on August 5, 1996 by Defendant Coffman. This incident resulted in an injury to Plaintiff's wrist, the extent of which is unclear.

Both of the alleged assaults took place while Plaintiff was incarcerated at Mahanoy. He has since been transferred to the State Correctional Institution at Greene. Prior to his transfer, the officers who allegedly assaulted Plaintiff were reassigned to different areas of Mahanoy. Plaintiff no longer has any contact with any of the Defendants.

II. Standard

Summary judgment is proper if "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party has the burden of informing the court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The non-moving party cannot rest on the pleading, but must go beyond the pleadings and "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); Celotex, 477 U.S. at 324. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Celotex, 477 U.S. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

III. Discussion

A. Injunctive Relief

In order for this court to grant a permanent injunction, a plaintiff must establish that (1) the exercise of equity

jurisdiction is proper, (2) the plaintiff has succeeded on the merits of the claim, and (3) the balance of the equities weighs in favor of injunctive relief. Ruscavage v. Zuratt, 821 F. Supp. 1078, 1081 (E.D. Pa. 1993). An injunction "looks to the future," rather than to past conduct. Douglas v. City of Jeannette, 319 U.S. 157, 165 (1943). Plaintiff fails to establish these requirements.

This court has equity jurisdiction if there is no adequate remedy at law and there is actual threatened injury. Ruscavage, 821 F. Supp. at 1081. A prisoner may not seek injunctive relief if he is no longer subject to the alleged conditions he attempts to challenge. Weaver v. Wilcox, 650 F.2d 22, 27 (3d Cir. 1981). In this case, as stated above, Plaintiff is no longer incarcerated at Mahanoy, and all Defendants were reassigned. Plaintiff has no contact with Defendants and, therefore, there is no threat of actual injury. Injunctive relief would be inappropriate under these circumstances.

B. Eighth Amendment Violations

Had Plaintiff sought damages, rather than injunctive relief, his Eighth Amendment claim would still fail. In order to prevail under Section 1983 for an Eighth Amendment violation, a plaintiff must prove that the defendant intentionally subjected him to punishment that was cruel and unusual. Hampton v. Holmesburg Prison Officials, 546 F.2d 1077, 1081-82 (3d Cir. 1976). Cruel and unusual punishment consists of the "unnecessary and wanton infliction of pain." Whitley v. Albers, 475 U.S. 312, 319

(1986). Excluded from constitutional recognition are de minimis uses of physical force, provided that the use of force is not of a sort "repugnant to the conscience of mankind." Hudson v. McMillian, 503 U.S. 1, 9-10 (1992) (quoting Whitley, 475 U.S. at 327.)

Plaintiff alleges that the Defendants scraped his hands when removing handcuffs and that Defendant Coffman caused Plaintiff's wrist to hurt and pushed him into a wall. These alleged injuries are constitutionally de minimis. See Barber v. Grow, 929 F. Supp. 820 (E.D. Pa. 1996) (claim dismissed where alleged incident happened once and injury consisted of cuts and bruises to arm and knee); Collins v. Bopson, 816 F. Supp. 335, 340 (E.D. Pa. 1993) (any injuries sustained by being held against a wall were de minimis). Any injuries sustained by Plaintiff are too minimal to support an Eighth Amendment claim.

IV. Conclusion

Therefore, after reviewing the facts in a light most favorable to Plaintiff, it is clear that he has not alleged facts and circumstances that would justify the issuance of an injunction. There is no evidence of future injury that Defendants could cause to the Plaintiff. Further, even if Plaintiff sought damages, his alleged injuries were de minimis and did not rise to the level of a constitutional violation. Accordingly, because Plaintiff has failed to present any evidence that future injury could occur, Defendants' Motion for Summary Judgment is hereby Granted.

An appropriate order follows:

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CORRECTIONAL OFFICERS C/O	:	
SGT. BRENT POST, et al.,	:	
	:	
Defendants	:	
_____	:	

ORDER

AND NOW, this 14th day of August, 1997, upon consideration of Defendants' Motion for Summary Judgment, and all responses thereto, it is hereby ORDERED that Defendants' motion is GRANTED.

BY THE COURT:

Robert F. Kelly, J.